IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 902 OF 2003

Shri Tukaram Krishna Shinde & ors. ... Appellants

V/s

Smt. Banubai w/o Dnyani Jadhav & ors. ... Respondents

Shri S.D. Patil for the appellants.

Shri S.G. Deshmukh for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 28TH OCT., 2004.

P.C.:

1. Heard the learned counsel for both parties.

2. The appellants/defendants have come into appeal against the judgment and order dated 9.6.2003 passed by the District Judge, Sangli, dismissing the appeal and confirming the order of the lower Court whereunder the suit was decreed and it was declared that the plaintiff was the owner of the suit land Block No. 1620 to the extent of 4-R land situated at village Ambak, Tal. Khanapur, Dist. Sangli and consequently the defendants were perpetually restrained from obstructing plaintiff's possession over the suit land.

3. The plaintiff had filed the suit against the defendants for declaration that she is owner of the land bearing Block No. 1620 to the extent of 4-R land situated at village Ambak and perpetual injunction restraining them from causing and obstructing to the suit property. The learned Trial Judge held that the plaintiff had proved her title and possession over the land Block No. 1620 except 4-R land. It was further held that she proved that the defendants had mutated their names against suit land Block No. 1620 falsely to the extent of 8-R in collusion with consolidation officer and, as such, the suit came to be decreed.

The appeal was carried to the District Court, Sangli, wherein the Addl. District Judge confirmed the findings recorded by the lower Court and dismissed the appeal.

4. The appellants came in this appeal against the concurrent findings recorded by both the Courts below with submission that the Civil Judge had no jurisdiction to determine the question which was required to be decided by the competent authority under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter

referred to as the said Act") by virtue of Sec.36-A of the said Act.

In this regard, it must be noted that the suit was basically based on title to the suit property. The learned appellate Court has observed that most of the factual positions involved in the dispute were admitted and the defendants had specifically admitted that by the sale deed Exh. Nos. 53 and 54 dated 10.1.1958 and 22.3.1971 respectively, the plaintiff had sold the portion out of erstwhile survey No. 226/2 to the extent of 2-1/2 pai share and 1-1/2 pai share, respectively. In the sale deed Exh.53, it was clarified that portion admeasuring 0.2-1/2 out of total area of Survey No. 226/2 was sold to the defendant No.1, whereas in the sale deed Exh.54 it was mentioned that a portion admeasuring 0-acre, 0.1-1/2 pai out of R.S. No. 226/2 was sold to defendant No.1. This sale deed therefore shows that the total portion admeasuring 4 gunthas only out of erstwhile survey No. 226/2 was sold to the defendant No.1. If this position was clear, then at the time of consolidation of fragmentation the adjustments appear to have been done by the Consolidation Officer as he could not decide the question of title. Therefore, both the Courts below have come to the conclusion that

the plaintiff had proved the title to the impugned property and the suit came to be decreed.

Therefore, in my considered view, no question of bar of Civil Court jurisdiction as contemplated under Sec.36-A of the Consolidation Act would arise at all. Once we reach this conclusion, the fact remains that remaining issues are based on factual aspect and cannot be gone into at the stage of second appeal as contemplated under Sec.100 of the C.P.C.

In the result, there is no merit in the appeal and deserves to be dismissed and stands dismissed in limine with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

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